

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Metropolitan Tabernacle, Inc.) District 1, Map 148B, Group B, Parcel 22.01) <i>Claim of Exemption</i>)	Hamilton County
---------------	---	-----------------

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-212(b)(2) from the denial of an application for exemption of the subject property from ad valorem taxation. The application was filed with the State Board of Equalization ("State Board") on March 31, 2006.¹ By letter dated October 11, 2006, State Board staff attorney Emily Bennett notified the applicant of the denial on the grounds that:

The portion of the property leased to Moreland Signs, Inc. does not qualify for exemption. The lease does not comply with the terms set forth in Tennessee Code Annotated section 67-5-212(a)(1)(A). The remaining portion of the property is denied for non-use.

The State Board received an appeal by Metropolitan Tabernacle, Inc. ("MT"), the applicant, on December 19, 2006. The undersigned administrative judge conducted a hearing of this matter on February 28, 2007 in Chattanooga. MT was represented by attorney Carolyn W. Schott, of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (Nashville). Deputy Assessor Beverly Dill appeared on behalf of the Hamilton County Assessor of Property.

Findings of Fact and Conclusions of Law

MT is an evangelical, charismatic church that was founded by Pastors Steve and Reita Ball and incorporated in this state in 2002. This growing, Chattanooga-based church presently has about 700 members. MT has been recognized as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

For a period of several months after its inception, MT met on the premises of other institutions. On February 7, 2003, MT entered into an agreement with HAL Properties, LLC for the purchase of the better part of a 7.21-acre tract alongside Highway 153 (at West Shepherd Road). Exhibit 1. Situated on that 5.16-acre segment – now identified as Parcel No. 148B-B-22 – were a "Jumbo Sports" building and paved parking area. The closing of the transaction occurred in May, 2003.

¹Though not received by the State Board until April 3, 2006, the mailed application is deemed to have been filed on the postmark date. State Board Rule 0600-1-.04(1)(b).

MT immediately converted the facility on Parcel 22 to a place of worship; and the institution's application for exemption of that parcel (as improved) was approved by the State Board.

Although MT wanted to buy the whole 7.21-acre tract, the church lacked the financial resources in 2003 to do so. So paragraph 11 of the sale contract granted MT a right of first refusal with respect to the remaining 2.05 acres. In the meantime, by verbal agreement with the seller, MT was permitted to use that unimproved land (between the parking lot and Highway 153) for church purposes in return for regularly mowing and maintaining it.

On February 3, 2004, apparently without MT's blessing, HAL Properties leased an unspecified portion of the retained acreage to Moreland Signs, Inc. for the erection of a billboard.² Exhibit 4. Under the terms of this 25-year agreement (effective on the actual date of installation), the lessee is obligated to pay an annual rental of \$4,000 or 15% of net revenue, whichever is greater.

By warranty deed dated January 11, 2006, MT acquired the contiguous 2.05-acre parcel for \$275,000.³ Pastor Reita Bell stated on MT's ensuing application for exemption of this property that it was used for "church and ministry related activities" (as well as the billboard advertising). The denial of that application prompted this appeal.⁴

The subject property consists mainly of level, grassy terrain that is accessible from Parcel 22 by a driveway. A retention pond in the southwest corner of Parcel 22 extends into the southernmost part of this land. There are two elevated signs on the subject parcel: the aforementioned billboard and one nearby identifying the church.

According to Pastor Ball's testimony, on 30-40 occasions each year since its purchase of Parcel 22, MT has used the adjoining parcel in question – either for various outdoor activities (e.g., Easter egg hunts; picnics; festivals; pony rides) or overflow parking in connection with special events held at the church. See Exhibit 2. In his estimation, the pole on which the billboard is mounted occupies only about five square feet of ground area.

In support of the appellant's claim of exemption under Tenn. Code Ann. section 67-5-212, Ms. Schott cited Youth Programs v. State Board of Equalization, 170 S.W.3d 92 (Tenn. Ct. App. 2004) for the proposition that continuous usage of the subject property is not required. The portion of this property devoted to commercial use, she posited, surely represented a small fraction of its total value.

²Moreland Signs, Inc. has since assigned its interest in this lease to another party.

³Curiously, the existing long-term lease was not mentioned in the deed.

⁴The Assessor's Checklist, signed by Ms. Dill on June 21, 2006, noted the presence of the billboard on the subject property. She also wrote that there was "no sign of church use, too close to interstate [sic] for playground or recreation." The State Board designee's initial determination was partially predicated on that observation.

Under authority of Article II, section 28 of the Tennessee Constitution, the legislature has decreed that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific, or nonprofit educational institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists....

Tenn. Code Ann. section 67-5-212(a)(1)(A). The General Assembly further provided in Tenn. Code Ann. section 67-5-212(a)(3), however, that:

The real property of any such institution not so used exclusively for carrying out thereupon one (1) or more of such purposes, but **leased** or otherwise used for other purposes, whether the income therefrom be used for one (1) or more of such purposes or not, shall not be exempt...[Emphasis added.]

State Board Rule 0600-8-.02, effective July 14, 2004, establishes criteria for exemption of land owned by a qualifying institution. Paragraphs (2) and (3) of that Rule read (in relevant part) as follows:

- (2) Land must be in actual use for exempt purposes of the exempt institution before it may qualify for exemption. Land will be presumed to be in use if:
 - (a) it is land underlying exempt structures or paving; (or)
 - (b) the total land area claimed for exemption, including that which is underlying exempt structures, is **five acres or less**...
- (3) The presumption in this rule is rebuttable. The assessor or taxing jurisdiction may rebut the presumption by proving that vacant land otherwise within the presumption is not being used for exempt purposes or is being offered for sale as a tract separate from the remaining land in use. **The applicant for exemption may rebut the presumption by proving that vacant land which would be denied exemption under the presumption, is in fact being regularly used for exempt purposes qualifying for exemption in accordance with law.**

[Emphasis added.]

In this state, property tax exemptions are liberally construed in favor of qualifying institutions such as MT. See, e.g., George Peabody College for Teachers v. State Board of Equalization, 407 S.W.2d 443 (Tenn. 1966). Nevertheless, as the party seeking to change the initial determination on its application for exemption, MT has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

Though by negative implication, the quoted rule of the State Board establishes a presumption *against* exemption of more than five acres of land associated with an exempt improvement (such as a church building). Since the vacant land in question is contiguous to the already tax-exempt 5+-acre site of MT's meeting hall, this presumption comes into play here. The fact that that "the total land area claimed for exemption" in the particular application under

appeal is less than five acres surely does not entitle MT to the benefit of a contrary presumption *in favor of* such exemption.

However, in the opinion of the administrative judge, MT has adduced sufficient evidence to overcome the applicable presumption except with respect to the leased billboard site. As counsel pointed out, the “actual” use required under State Board Rule 0600-8-.02 need not amount to constant or uninterrupted use. Further, the types of uses to which Pastor Ball testified have historically been deemed to be reasonably related to the accomplishment of a religious institution’s exempt purposes.

Allocation of a precise amount of acreage to the billboard is admittedly problematic. Realistically, given the overhang of this structure as well as the necessary power connections and the lessee’s right of ingress and egress, the “real estate site” contemplated by the agreement cannot be limited to the mere dimensions of the supporting pole. In the absence of more definitive proof, the administrative judge concludes that one-half acre may reasonably be attributed to the non-qualifying lease.

Inasmuch as MT filed its application for exemption by May 20, 2006 and began exempt use of the subject land even before the institution acquired it, the recommended partial exemption will be effective as of the date of purchase. Tenn. Code Ann. section 67-5-212(b)(3)(A).

Order

It is, therefore, ORDERED that 1.55 acres of the subject land shall be exempt from taxation, effective January 11, 2006. The remainder of the parcel in question shall be taxable.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28th day of March, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Carolyn W. Schott, Attorney, Baker, Donelson, Bearman, Caldwell & Berkowitz
Metropolitan Tabernacle, Inc.
Beverly Dill, Hamilton County Assessor's Exemption Department

MT.DOC